IN THE
Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF JAMES LINCOLN FOR A WRIT OF HABEAS CORPUS.

BRIEF OF PETITIONER.

STATEMENT OF FACTS.

It is admitted that James Lincoln, your petitioner, was convicted by the United States District Court for the District of Nebraska of introducing liquor in the Indian Country, to-wit: THE WINNEBAGO RESERVATION IN THURSTON COUNTY, NEBRASKA under the provisions of the Act of Congress of January 30, 1897, 29 Statutes at Large, page 506. It is further admitted that the said James Lincoln is an allottee of lands under the provisions of the Act of Congress of February 8th, 1887. See page 24 of Record.

It is further admitted that the Winnebago Reservation in Thurston County, Nebraska has been allotted practically in whole. That many of the allotments made to Indians now deceased have been sold, and that within the original boundry limits of the Reservation there is land owned and occupied by

white people over which the United States has no supervision.

It is further admitted that the said Winnebago Reservation is within an organized County of the State of Nebraska. That in the State and County Government extending over this Reservation the Winnebago Indians take an active part. That some of them hold office as County Commissioners, Justices of the Peace, Constables, Road Overseers, Election Officers, and Jurors in the County and District Courts. That all of them otherwise qualified exercise their right of franchise as electors.

ARGUEMENT.

It is claimed by your petitioner that the territory refered to as the WINNEBAGO RESERVATION IN THURSTON COUNTY, NEBRASKA is within the sole and exclusive police power and jurisdiction of the State of Nebraska. That the United States of America did not when the State of Nebraska was admitted into the Union reserve any police power or jurisdiction over the Territory in question, and that the State of Nebraska has not granted to the United States any such jurisdiction.

That the enabling act to the People of the Territory of Nebraska was passed on April 19, 1864 and is found in Volume 13 United States Statutes at Large page 47. This act was passed prior to the Treaty of March 8, 1865 by which the Reservation was created

for the Winnebago Indians and granted to them. The jurisdiction of the State of Nebraska over similar territory, in fact a part of the same territory the Omaha Reservation out of which the Winnebago Reservation was created has been considered by the Supreme Court of the State of Nebraska in the case of Painter vs. Ives, 4 Nebraska 128 where the court says :

"Now it is only within those particular places mentioned in the sixteenth subdivision of section eight, article one, of the federal constitution, that Congress can provide general police regulations for the government of the people. All other places are within the exclusive control of the state government, to whose legislation we must look for the punishment of all ordinary crimes and misdemeanors. From this it would seem clear that at the date of our admission into the Union, every portion of the territory within the prescribed boundries of the state, THE INDIAN RESERVATIONS INCLUDED, became subject to its laws, and that for the punishment of all ordinary crimes, such as that under consideration, resort could alone be had to state laws, administered by state courts."

The same conclusion was reached in the case of Ex parte Sloan in which the Court said :

"After a State has been admitted into the Union, the fact that within its boundries land, the fee of which is in the United States, is set apart for an Indian Reservation is not enough of itself to give the United States Court jurisdiction to try a person for murder committed within the limits of such reservation."
4 Sawyer, 330.

The effect given an enabling act as to the jurisdiction of the United States Courts over offenses committed on an Indian Reservation as it might be limited by a disclaimer of right to such lands is fully discussed in the case of Draper vs. United States, 164 U. S. 244 where the Court says :

"As equality of statehood is the rule, the words relied on here to create an exception cannot be construed as doing so, if, by any reasonable meaning, they can be otherwise treated. The mere res-

ervation of jurisdiction and control by the United States of 'Indian Lands' does not of necessity signify a retention of jurisdiction in the United States to punish all offenses on such lands by others than Indians or against Indians."

This case approves the decision of United States vs. McBranty 104 U. S. 622 from which the court uses the following statement:

"Whenever, upon the admission of a state into the Union Congress has intended to except out of it an Indian Reservation, it has done so by express words."

There is no exception in the enabling act admitting the State of Nebraska and the language is much broader than that of the Montana enabling act.

The Indians within the Winnebago Reservation of Thurston County, Nebraska being allottees they are therefore citizens, and no question can arise under that part of the Act of January 30, 1897 as to selling or giving to Indians. The question is wholly as to introducing into the Indian country. The question is wholly as to the police power or jurisdiction of the United States over the said Reservation. The question is materially answered by this court in the case of In re Heff wherein it is said:

"Now the act of 1897 is not a revenue statute, but plainly a police regulation. It will not be doubted that an act of Congress attempting as a police regulation to punish the sale of liquor by one citizen of a State to another within the territorial limits of that State would be an invasion of the State's jurisdiction and could be sustained, and it would be immaterial what the antecedent status of either buyer or seller was. There is in these police matters no such thing as a divided sovereignty. Jurisdiction is vested entirely in either the State or nation and not divided between the two."

In re Heff 197 U. S. 489.

The act then is a police regulation and there is no

divided sovereignty. This Court further cites and approves the case of the United States vs. Dewitt 9 Wall. 41 and quotes therefrom as follows :

> "As a police regulation, relating exclusively to the internal trade of the States, it can only have effect where the legislative authority of Congress excludes, territorially, all State legislation, as for example, in the District of Columbia. Within State limits, it can have no constitutional operation."

The Indian then who is a voter, citizen and wholly released from Federal wardship, and subject to only the laws of the State of which he is a resident and citizen should not be deprived of his liberty by laws that invade the State's jurisdiction. The County of Thurston within which the Reservation lies was organized in the year 1889, see Cobbey's Annotated Statutes page 1518. The Indians were allotted lands, and patents issued to them in 1893 and the Act under which petitioner was convicted was not passed until January 30, 1897. The enabling act, the allotments, and the organization of the County were all legal acts long prior to the act under which petitioner was prosecuted, and convicted. The said act of January 30, 1897 is subsequent to all these rights of the State, the County and the allottee.

The liquor traffic is under the control and regulation of State laws. The State of Nebraska has provided punishment for the violation of its liquor laws, and the Indian Citizen the same as other citizens, should be subject to only one sovereign jurisdiction and power.

The freedom to handle liquor is not necessary to

the Indian's success. But to be treated as a man under the laws of the Country is necessary.

Respectfully submitted,

WILLIAMSON S. SUMMERS

AND

THOMAS L. SLOAN,

Attorneys for Petitioner.